evidence would be adduced. The purpose of the orders made by the learned judge was to enable the intervener to bring up his claim and to take part in the proceedings, and also to facilitate trial. As regards the delay of the intervener in lodging a caveat and taking other necessary actions, there are some explanations to be found in his affidavit. He was illiterate and over seventy years of age. He stated that he did not get help from his former solicitor who had acted for him in the purchase of the property and with whom he became unhappy on discovering some facts which the solicitor should have informed him but had failed to do so. In view of these facts and other facts stated by him, the learned judge came to the conclusion that there was no unreasonable delay on the part of the intervener. We do not find anything which would justify our interference with the learned judge's conclusion.

Another ground of appeal is that after the property had been registered in his name pursuant to the judgment in default, he sold it to a third party, who bought it without notice of the intervener's claim. To support this contention, the plaintiff produced a document dated 1 November 1982 with the heading "Memorandum of Sale" which was signed by him, in which he stated that he agreed to sell the property to Golden Jade Enterprise (M) Sdn. Bhd. for $65,000 and acknowledged to have received $30,000 as part payment of the price. This document was not executed by the company, and it was not a sale and purchase agreement. The position now is that there is not even *prima facie* evidence to show that the property has been bought from the plaintiff by a *bona fide* purchaser for value without notice of the intervener's claim. The company had not come forward to take part in these proceedings, and there was nothing from the company itself to confirm that it had bought the property or it objected to the intervener's application.

We dismiss the plaintiff's appeal and affirm the orders made by the learned judge on 6 April 1987. We further order that immediately after the names of the defendants are reinstated in the Land Registry record as the registered owners, the Registrar of Land Titles should register against the holding a registrar's caveat under sections 319 to 321 of the National Land Code and such registration shall continue until further order of the High Court. We further order that the intervener should file his pleading and serve it on the other parties within 14 days from today.

The appeal is dismissed with costs. The deposit should be paid out to the intervener on account of taxed costs.

Appeal dismissed.

Solicitors: *Darshan Singh & Co.; Cheong Wai Meng & Van Buerle.*

NATIONAL UNION OF HOTEL, BAR & RESTAURANT WORKERS v. RASA SAYANG BEACH HOTELS (PG) BHD. & ANOR.

[S.C. (Lee Hun Hoe C.J. (Borneo), Mohamed Azmi & Wan Hamzah S.C.JJ.) 10 February & 14 May 1988]

[Kuala Lumpur – Supreme Court Civil Appeal No. 376 of 1987]

Administrative Law – Disciplinary inquiry – Transfer of worker from position of waitress to ironer – Reference to Industrial Court – Worker reinstated and employer ordered to pay arrears of salary, allowances and pay benefits – Claim for payment of service charge – Whether Industrial Court has jurisdiction – Claim should be brought in civil court.

In this case, one Jamilah who was employed as a waitress by the hotel was, after a disciplinary inquiry, transferred from the position of waitress to that of an ironer. She was aggrieved by the action of the hotel and stopped working. Her case was taken up by the union and the dispute was referred to the Industrial Court, which found that the disciplinary action taken by the hotel was without just cause or excuse. The Industrial Court made an award that: (a) Jamilah should be reinstated in her former post as waitress without any loss of service, pay or any benefits and as if she had not left the service (b) she be paid all arrears of salary, allowances and benefits including service points due to her up to the date of reinstatement.

There was a dispute as to the payment of the service charge as the hotel had by mistake paid to the other employees Jamilah's share of the service charge in respect of the period when she did not work. Eventually as Jamilah had not received her arrears of service charge the union brought her claim to the Industrial Court against the hotel for non-compliance with the award in not making the payment. The Industrial Court made an award in which it directed that the arrears of service charge should be paid to Jamilah from the service share pool for November 1986. The union applied to the High Court for an order of certiorari to quash the decision of the Industrial Court but the application was dismissed. The union appealed.

Held, allowing the appeal: (1) the Industrial Court had no jurisdiction to determine the later dispute as there was no order by the Minister to refer it to the Industrial Court. The Industrial Court's jurisdiction to determine the earlier dispute could not extend to the determination of the later dispute which is a dispute between different parties;

(2) the hotel in this case has to pay the arrears in accordance with the earlier award of the Industrial Court and then if it is confident that it is entitled to recover from the other employees what had been paid to them by mistake, it can bring an action in the civil court to recover the amount.

SUPREME COURT.

T. Thomas (*C.L. Wong* with him) for the appellant.

C.V. Das for the respondents.

Cur. Adv. Vult.

Wan Hamzah S.C.J. (delivering the judgment of the court): One Jamilah Mansor was employed by Rasa Sayang Beach Hotels (Pg.) Berhad (the hotel) as a waitress. Following a disciplinary inquiry, the hotel transferred her from the position of a waitress to that of an ironer. She was aggrieved by the action of the hotel and she stopped working. Subsequently, the National Union of Hotel, Bar and Restaurant Workers (the union) took up her case. Eventually the dispute between Jamilah and the hotel was referred by the Minister to the Industrial Court under section 26(2) of the Industrial Relations Act 1967. On 30 April 1982 the Industrial Court made an award in favour of Jamilah, *i.e.* Award No. 82/1982. The Industrial Court found that the disciplinary action taken by the hotel was without just cause or excuse and that Jamilah was entitled to plead constructive dismissal. The following are the relevant terms of the award:

(i) Jamilah should be reinstated in her former post as waitress without any loss of service, pay or any benefits and as if she had not left the service;

(ii) she should be paid all arrears of salary, allowances and any benefits including service points due to her up up to the date of reinstatement.

So in accordance with the above terms the hotel was required to pay Jamilah service charge in respect of the period when she stopped working, in the same amount as if she had been working as a waitress. It is not disputed by the parties that under the terms of the award Jamilah was entitled to the payment of service charge in respect of the period from 20 April 1981 to the date of her reinstatement, *i.e.* 2 May 1986 in the sum of $24,151. But the hotel did not pay this to her because of a dispute between the hotel and the union as to which source of money the amount should be paid. The hotel wanted to make the payment out of the pool of service charges to be collected from the customers after Jamilah's reinstatement, whereas the union contended that the arrears of service charge should be paid by the hotel solely and exclusively from its own monies and without recourse to monies in the service charge pool. As Jamilah did not receive her arrears of service charge the union brought a claim to the Industrial Court against the hotel for non-compliance with the award in not making the payment. When the complaint came up for hearing before the Industrial Court, the issue as to whether the payment should be made out of the hotel's own fund or from the service charge pool predominated the hearing, and on 27 October 1986 the Industrial Court made an award, *i.e.* Award No. 319/1986, in which it directed that the arrears of service charge be paid to Jamilah from the service charge pool for November 1986. The union took out a notice of motion in the High Court for an order of certiorari to quash the decision of the Industrial Court that monies in the service charge be used for the payment of the arrears, on the ground that the Industrial Court in making such an order had acted without jurisdiction or in excess of its jurisdiction. The High Court dismissed the motion. Hence this appeal to us.

In the proceeding before the Industrial Court leading to Award No. 82/1982, the union took part as a representative of Jamilah. It appeared that at the proceeding before the Industrial Court leading to Award No. 319/1986, the union represented Jamilah on the subject of the non-compliance, *i.e.* the failure on the part of the hotel to pay her the arrears, and the union represented other employees on the issue of whether the arrears should be paid out of the hotel's own fund or from the service charge pool. It may also be said that Jamilah is also a party in that issue. In respect of the dispute between Jamilah and the hotel which was the subject matter of Award No. 82/1982, there was an order of the Minister referring the dispute for determination by the Industrial Court. Thus the Industrial Court was conferred with jurisdiction to hear the dispute and to make an award thereon, and the jurisdiction extended to the hearing of a complaint of non-compliance with the award. But the later dispute as to whether the hotel should pay the arrears out of its own fund or from the service charge pool is a dispute distinct from the earlier dispute the subject matter of Award No. 82/1982 and from the question of compliance with the award. The parties to the earlier dispute are really different from the parties to the later dispute. In respect of the later dispute, there was no order by the Minister to refer it to the Industrial Court. This dispute has arisen long after the Minis-

ter had made the reference. We do not think that the Industrial Court's jurisdiction to determine the earlier dispute extended to the determination of the later dispute which is a dispute between different parties.

It appears that the true position in this case is as follows. The hotel by mistake paid to other employees Jamilah's share of the service charge in respect of the period when she did not work, *i.e.* before her reinstatement. The hotel was under the mistaken belief that she was not entitled to it. After Award No. 82/1982 was made, the hotel realizes that it has to pay her share of the service charge in arrears, but it believes that it can recover from the other employees what it had paid them by mistake. Therefore it contends that it can pay Jamilah her arrears of service charge out of the service charge received from the customers after her reinstatement, so that the other employees would now receive their shares of the service charge less the amount which had mistakenly been paid to them. The order contained in Award No. 82/1982 for the payment to Jamilah of her arrears of service charge is directed to the hotel. Therefore the hotel has to pay the arrears, and it has to pay out of its own fund in the first instance, and then if it is confident that it is entitled to recover from the other employees what had been paid to them by mistake, it can bring a court action to recover, and the court which has the jurisdiction to entertain such action is the civil court. In other words, whether the hotel can recover from the other employees what has been paid to them by mistake is a matter which does not concern the Industrial Court in this particular reference. Whatever may be the outcome of that dispute should not deny Jamilah from being paid immediately her dues under Award No. 82/1982 consequent to her wrongful constructive dismissal.

The appeal is allowed with costs here and in the High Court. Award No. 319/1986 is quashed. Deposit to be refunded to the union. We further order that the hotel should pay to Jamilah within one month from today what she is entitled to under Award No. 82/1982.

Appeal allowed.

Solicitors: *Skrine & Co.; Shook Lin & Bok.*

DERRICK GREGORY v. PUBLIC PROSECUTOR

[S.C. (Abdul Hamid C.J. (Malaya), Hashim Yeop A. Sani & Syed Agil Barakah S.C.JJ.) 18 & 19 April 1988]

[Kuala Lumpur – Supreme Court Criminal Appeal No. 12 of 1987]

Criminal Law – Charge of trafficking in drugs – Defence of duress – Evidence of state of mind of accused – Expert evidence – Sentence – Dangerous Drugs Act 1952, s. 39(B)(2) – Penal Code (F.M.S. Cap. 45), s. 94.

In this case, the appellant had been charged with trafficking in dangerous drugs. At the trial, the defence did not challenge the evidence of the prosecution but relied on the defence of duress. The learned trial judge rejected the defence of duress and convicted the appellant and sentenced him to death. The appellant appealed.

Held, dismissing the appeal: (1) the law clearly envisages that to constitute threats causing the apprehension that instant death to that person will be the consequence, there must be reasonable fear. Persons who do criminal acts from fear of anything but instant death do them at their peril;

(2) there was no misdirection in law as the learned judge fully appreciated what is required in law to constitute a valid defence of duress. The learned judge correctly conceived that each case would depend on the facts and surrounding circumstances of that particular case. He found that there was no evidence to suggest that duress was present or continued when the accused was arrested;

(3) the learned judge in this case held that he could not find any evidence sufficient to cast a reasonable doubt on the prosecution's case. The court agreed with the trial judge that the defence of duress could not stand and the conviction must be upheld. As to sentence, the learned judge had exercised his discretion judicially and it was not right for the court to interfere.

Case referred to:

(1) *Tan Seng Ann* v. *Public Prosecutor* [1949] M.L.J. 87 (refd).

SUPREME COURT.

R. Rajasingam for the appellant.

Josephine Navaratnam (Miss) (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Abdul Hamid C.J. (Malaya) (delivering the judgment of the court): The appellant was apprehended at the Bayan Lepas Airport, Penang with seven packets of heroin in his left boot and seven packets of heroin in his right boot and another four packets of heroin in his underwear. He was tried in the High Court, Penang and was convicted under section 39(B)(2) of the Dangerous Drugs